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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

Case No.

KEVIN ARMSTRONG,

Plaintiff,

v.

WESTLAKE FINANCIAL SERVICES,

Defendant.

**COMPLAINT FOR DAMAGES**

**1. VIOLATION OF THE TELEPHONE  
CONSUMER PROTECTION ACT  
PURSUANT TO 47 U.S.C. § 227.**

**2. VIOLATION OF THE ROSENTHAL  
FAIR DEBT COLLECTION PRACTICES  
ACT, CAL. CIV. CODE § 1788 *ET SEQ.***

**JURY TRIAL DEMANDED**

**COMPLAINT**

**NOW COMES** Kevin Armstrong (“Plaintiff”), by and through his attorney, Nicholas M. Wajda (“Wajda”), complaining as to the conduct of Westlake Financial Services (“Defendant”) as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action seeking redress for violations of the Telephone Consumer Protection Act (“TCPA”) pursuant to 47 U.S.C. §227 and violation of the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) pursuant to Cal. Civ. Code §1788.

**JURISDICTION AND VENUE**

2. Subject matter jurisdiction is conferred upon this Court by the TCPA, and 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Eastern District of California, Plaintiff resides in the Eastern District of California, and a substantial portion of the events or omissions giving rise to the claims occurred within the Eastern District of California.

**PARTIES**

4. Plaintiff is a consumer and natural person over 18-years-of-age who, at all times relevant, is a “person” as defined by 47 U.S.C. §153(39).

5. Defendant is an automobile finance company organized under the laws of the state of California with its principal place of business located at 4751 Wilshire Boulevard, Suite 100, Los Angeles, California 90010. Defendant solicits consumers throughout the country, including consumers in California.

6. Defendant is a “person” as defined by 47 U.S.C. §153(39).

7. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

**FACTS SUPPORTING CAUSES OF ACTION**

8. In 2018, Plaintiff purchased a vehicle which was financed through Defendant and incurred debt (“subject debt”) as a result.

1       9. At all times relevant, Plaintiff was the sole subscriber, owner, and operator of the cellular  
2 phone ending in -9852. Plaintiff is and has always been financially responsible for the cellular  
3 phone and its services.

4       10. As soon as payments towards the subject debt became due, Defendant would place a barrage  
5 of phone calls to Plaintiff's cellular phone if he was even one day late on the payments.  
6

7       11. During one particular phone call Defendant placed to Plaintiff's cellular phone, Plaintiff  
8 asked that Defendant cease placing calls to his cellular phone unless he was 30 days late. Plaintiff  
9 never intended on being 30 days late on any payments to Defendant.

10       12. Notwithstanding Plaintiff's reasonable request, Defendant continued to harass Plaintiff by  
11 calling his cellular phone upon missing payment by even one day.

12       13. Fed up with Defendant's constant harassment, Plaintiff demanded that Defendant cease  
13 placing calls to his cellular phone in May 2020.  
14

15       14. Although Plaintiff demanded that Defendant's phone calls stop, Defendant has continued  
16 to place calls to Plaintiff's cellular phone.

17       15. Defendant has primarily used the phone numbers (415) 484-4178, (213) 835-1217, and  
18 (855) 268-4326 when contacting Plaintiff's cellular phone. Upon information and belief, Defendant  
19 has used other numbers as well.  
20

21       16. Upon information and belief, the aforementioned phone numbers are regularly utilized by  
22 Defendant to make outgoing calls to consumers.

23       17. During answered calls, Plaintiff has been experienced a significant pause, lasting several  
24 seconds in length, causing Plaintiff to say "hello" several times before being connected to a live  
25 representative.

26       18. Defendant has also called Plaintiff's cellular phone multiple times during the same day.

27       19. Frustrated over the persistent calls, Plaintiff spoke with his attorneys regarding his rights.  
28

1       20. Plaintiff has been unfairly harassed by Defendant's actions.

2       21. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not  
3 limited to, invasion of privacy, aggravation that accompanies solicitation telephone calls, emotional  
4 distress, increased risk of personal injury resulting from the distraction caused by the constant calls,  
5 increased usage of his telephone services, loss of cellular phone capacity, diminished cellular phone  
6 functionality, decreased battery life on his cellular phone, and diminished space for data storage on  
7 his cellular phone.  
8

9                   **COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

10       22. Plaintiff repeats and realleges paragraphs 1 through 21 as though fully set forth herein.

11       23. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their  
12 cellular phone using an automatic telephone dialing system ("ATDS") or pre-recorded messages  
13 without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as "equipment  
14 which has the capacity...to store or produce telephone numbers to be called, using a random or  
15 sequential number generator; and to dial such numbers."  
16

17       24. Defendant used an ATDS in connection with its communications directed towards  
18 Plaintiff's cellular phone. The significant pause, lasting several seconds in length, and the fact that  
19 Plaintiff had to say "hello" several times before a live representative began to speak is instructive  
20 that an ATDS was being utilized to generate the phone calls. Additionally, Defendant's constant  
21 contacts after Plaintiff demanded that the phone calls stop further demonstrates Defendant's use of  
22 an ATDS. Moreover, the nature and frequency of Defendant's contacts points to the involvement  
23 of an ATDS.  
24

25       25. Defendant violated the TCPA by placing numerous phone calls to Plaintiff's cellular phone,  
26 using an ATDS, without his consent. Plaintiff did not provide Defendant with consent to contact  
27 him, but Defendant still called Plaintiff's cellular phone without his permission.  
28

26. The calls placed by Defendant to Plaintiff were not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

27. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

**WHEREFORE**, Plaintiff, Kevin Armstrong, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff seeking payment of the subject consumer debt; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

**COUNT II – VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

28. Plaintiff restates and realleges paragraphs 1 through 27 as though fully set forth herein.

29. Plaintiff is a "person" as defined by Cal. Civ. Code § 1788.2(g).

30. The alleged subject debt is a "debt" and "consumer debt" as defined by Cal. Civ. Code § 1788.2(d) and (f).

31. Defendant is a "debt collector" as defined by Cal. Civ. Code § 1788.2(c).

**a. Violations of RFDCPA § 1788.11(d)**

32. The RFDCPA, pursuant to Cal. Civ. Code § 1788.11(d), states that a debt collector may not cause "a telephone to ring repeatedly or continuously to annoy the person called."

1 33. Defendant violated the RFDCPA when it continuously called Plaintiff's cellular phone after  
2 he demanded that Defendant stop calling him.

3 34. Moreover, Defendant was told more than once to stop calling Plaintiff's phone.

4 35. Defendant disregarded these requests, and continued to calls to Plaintiff, numerous times,  
5 with the goal of annoying Plaintiff into paying the subject debt.  
6

7 **b. Violations of RFDCPA § 1788.11(e)**

8 36. The RFDCPA, pursuant to Cal. Civ. Code § 1788.11(e), states that a debt collector may not  
9 communicate "by telephone or in person, with the debtor with such frequency as to be unreasonable  
10 and to constitute a harassment to the debtor under the circumstances."

11 37. Defendant violated the RFDCPA when it continuously called Plaintiff's cellular phone after  
12 he notified it to stop calling. This repeated behavior of systematically calling Plaintiff's cellular  
13 phone despite his demands was unreasonable and harassing.  
14

15 38. Furthermore, Defendant relentlessly contacted Plaintiff multiple times per day on numerous  
16 occasions. Placing such voluminous calls on the same day in short succession constitutes conduct  
17 that is unreasonable and harassing in an attempt to harass Plaintiff into making payment in violation  
18 of the RFDCPA.

19 39. Upon being told to stop calling, Defendant had ample reason to be aware that it should cease  
20 its harassing campaign of collection phone calls. Nevertheless, Defendant consciously chose to  
21 continue placing calls to Plaintiff's cellular phone.  
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1 **WHEREFORE**, Plaintiff KEVIN ARMSTRONG respectfully requests that this Honorable Court:

- 2 a. Declare that the practices complained of herein are unlawful and violate the  
3 aforementioned statute;  
4 b. Award Plaintiff actual damages, pursuant to Cal. Civ. Code § 1788.30(a);  
5 c. Award Plaintiff statutory damages, pursuant to Cal. Civ. Code § 1788.30(b);  
6 d. Award Plaintiff costs and reasonable attorney fees as provided pursuant to Cal. Civ.  
7 Code § 1788.30(c); and  
8 e. Award any other relief as the Honorable Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all issues in  
11 this action so triable of right.

12  
13  
14 Date: May 29, 2020

Respectfully submitted,

15 By: /s/ Nicholas M. Wajda

16 Nicholas M. Wajda  
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